Supreme Court

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No. 97-

OFFICE OF THE CLERK

IN THE
Supreme Court of the United States
Term, 1997

BOBBY RIGGS, and M-HELICOPTERS OF TENNESSEE, INC.,

Petitioners

vs.

CHARLES W. BURSON, Tennessee Attorney General and Reporter, CARL JOHNSON, Commissioner of the Tennessee Department of Transportation,

Respondents

On Petition for Writ of Certiorari
To The Supreme Court of the State of Tennessee

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether Chapter 727 is preempted by the Federal Aviation Act or the Federal Noise Act.

2. Whether the Chapter 727 violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

3. Whether Chapter 727 violates the provisions of the Tennessee Constitution forbidding the suspension of general law or the imposition of burdens based on an unreasonable classification.

4. Whether Chapter 727 violates the statute allowing the continuance of nonconforming uses of property.

5. Whether the case should have been remanded for further development of the facts.

PARTIES AND CORPORATE DISCLOSURE

The undersigned counsel of record certifies that the persons and entities listed below are parties in this proceeding.

Petitioners:

Bobby Riggs, a natural person, residing in the State of Tennessee;
M-HELICOPTERS OF TENNESSEE, INC., a corporation with its principle place of business in Pigeon Forge, Tennessee.

Respondent:

Charles Burson, Tennessee Attorney General and Reporter;
Carl Johnson, Commissioner of the Tennessee Department of Transportation.

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OPINION BELOW

The opinion of the Tennessee Supreme Court is reported and is reprinted in the Appendix at App. 8.

JURISDICTION

The plaintiff's motion for rehearing before the Tennessee Supreme Court was denied on April 7, 1997. This petition for certiorari is timely filed within ninety (90) days of that date. This Court has jurisdiction pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case concerns the Supremacy Clause of Article VI and the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment of the United States Constitution,

which are set out in the Appendix beginning at App. 1. Chapter 727 of the 1992 Tennessee Public Acts is reprinted in the Appendix at App. 3.

STATEMENT OF THE CASE

On June 24, 1994, Petitioners, Bobby Riggs and M-Helicopters of Tennessee, Inc., filed a complaint in the Circuit Court of Sevier County against the Commissioner of the Tennessee Department of Transportation and the Attorney General of the State of Tennessee (the State). In that complaint, the Petitioner challenged the constitutionality of 1992 Tenn. Pub. Acts ch. 727. (now codified at Tenn. Code Ann. § 42-8-101 to-105 (1993)).

The Petitioners complain that the statute is unconstitutional because it is preempted by federal law, because it violates due process and equal protection, and because it

effects an unconstitutional taking of private property without just compensation.

The Petitioner, Bobby Riggs, owns and operates M-Helicopters of Tennessee. The Petitioners and other heliport businesses, all located in the city of Pigeon Forge, Tennessee, provide aerial sightseeing tours near, but not over, the Great Smoky Mountains National Park. Bobby Riggs, a former Marine Corps pilot, is a licensed, commercial helicopter and fixed-wing pilot with forty years of flying experience. He has thirty-two years of experience as superintendent of maintenance and flight training of the Metro-Dade Police Department in Florida. He is a flight instructor, an instrument instructor and holds an instrument license and a power plant mechanic's license. In all the years he has been flying, he has never had an accident. He has never been cited by the FAA for any type of violation.

Mr. Riggs holds a ten-year lease on the land he is currently using as a heliport in Pigeon Forge. He owns two helicopters valued at $900,000.00 and approximately $200,000.00 of other equipment at this location. The site has been licensed as an airport for fifteen years and specifically as a heliport for more than three years. There is no dispute that if forced to shut down this heliport, Mr. Riggs will be forced to liquidate his assets and suffer a substantial economic loss.

Prior to the enactment of the statute which is under review in this case, the local government officials have attempted to close down helicopter operations in Pigeon Forge. The first effort to enact an ordinance in Pigeon Forge failed when it was ruled preempted by federal law. Riggs v. City of Pigeon Forge, No. 91-493 (Sevier Circuit). Another attempt, this time through the General Assembly, failed when the Tennessee Attorney General's Office would not support the bill as drafted.

Failing to enact a local zoning restriction, the opponents of the Petitioners' business persuaded the state legislature to pass Chapter 727. Chapter 727 prohibits the operation of a commercial heliport within nine miles of the boundary of a national park. Since there is only one National Park located within Tennessee, the statute applies only to Sevier, Blount and Cocke Counties. Passage of the bill was undoubtedly made easier by the fact that it affects only three counties. The chief benefit to enacting a state statute for the proponents of the Act was that it expressly circumvented the statutory rule that local zoning ordinances must permit nonconforming uses. Tenn. Code Ann. § 13-7-208.

Although the Act claims to protect schools and residential areas from noise and the safety hazards of heliports, the Petitioners' heliport and all other heliports in the vicinity are located in commercial areas in the city of Pigeon Forge. As the bill was being considered by the General Assembly, there were

no hearings in which evidence was brought to demonstrate that heliports within nine miles of a national park posed any danger to public safety, presented a noise problem, or created a public nuisance. No fact-finding was conducted at all. In the discussions before the transportation committees and on the floor of the House and Senate, the only concern that was mentioned was for disturbing the peace of the park animals and tourists. Contrary to these assumptions concerning noise, the Petitioners conducted tests of noise levels in and around area schools and businesses and found no appreciable increases in noise levels and nothing to support the claimed disturbance of schools and residents.

On September 13, 1994, this case was consolidated with several other cases.[1] The plaintiffs in these actions later withdrew. On September 23, 1994, the State filed a motion to

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[1] Great Smoky Adventures, L.P., v. Burson, No. 93-355; Haynes v. Burson, No. 93-356; Scenic Helicopter Rides, Ltd. v. Burson, No. 93-357.

dismiss for failure to state a claim. On the same day, the Petitioners filed a motion for summary judgment.

The motions were heard on October 24, 1994. At the hearing, the parties agreed to reserve the issue of inverse condemnation, and to allow the plaintiffs' business to continue to operate pending a resolution of the matter. The trial court dismissed the plaintiffs' motion for summary judgment and granted the State's motion to dismiss. Judgment was entered accordingly on December 21, 1994, under Tenn.R.Civ.P. 54.02 certifying it for immediate appeal. A notice of appeal was filed on January 19, 1995.

In a decision dated October 31, 1995, the Tennessee Court of Appeals reversed the trial court on three grounds. The State subsequently filed an appeal to the Tennessee Supreme Court. That court reversed the Tennessee Court of Appeals, concluding that there was no preemption and no violation of due process or equal protection. The Tennessee Supreme

Court's decision was entered on March 10, 1994 and the Petitioners' motion for rehearing was denied on April 7, 1997.

ARGUMENT

CHAPTER 727 IS PREEMPTED BY FEDERAL LAW.

Congress has preempted state law in the field of aircraft noise.

The Supremacy Clause of the United States Constitution provides that "[t]he Constitution and laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land." U.S. Const., art. VI, cl. 2.

> Under the Supremacy Clause, federal law may supersede state law in several different ways. First when acting within constitutional limits, Congress is empowered to pre-empt state law by so stating in express terms. In the absence of express pre-emptive language, Congress' intent to pre-empt all state law in a particular area may be inferred where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress "left no room" for supplementary state regulation. Pre-emption of a whole field

> will also be inferred where the field is one in which "the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject."

Hillsborough County v. Automated Med. Labs, Inc., 471 U.S. 707, 712-13 (1985) (citations omitted).

As recognized by the United States Supreme Court in City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624 (1973), the Federal Aviation Administration and the Environmental Protection Agency have full control over the issues of airspace management and of aircraft noise. In that case, the City of Burbank enacted an ordinance placing a curfew on the takeoff and landing of jet aircraft from the local airport. The Court ruled the ordinance unconstitutional as violating the preemption doctrine of the Supremacy Clause. The Court stated that although states may generally regulate noise through their police power, "the pervasive control vested in the EPA and the FAA under the 1972 Act seems to us to leave no room for

local curfews *or other local controls*." 411 U.S. at 638. The Court specifically cited the concerns of Congress in passing the Noise Control Act of 1972 not to allow inconsistent local laws to spring up regulating aircraft noise.

The stated purposes of the Act specifically target aircraft noise.

Chapter 727, on its face, is an attempt to regulate aircraft noise which is preempted by federal law. In its preamble, the Act states in part as follows:

> WHEREAS, the use of this land for helicopter operations is inconsistent with the development of the tourist industry in those counties because the *helicopters disturb the peace and quiet and interrupt the enjoyment of the area by most tourists*; and
> WHEREAS, the use of this land for helicopter operations is inconsistent with the *residential development* in those counties because the helicopters pose a safety hazard to *residents in their homes* and to motor vehicle operators on the *area roads and highways*, disturb the *peace and quiet* and interrupt the enjoyment of the area by *residents in their homes and places of work*, and interfere with the operation of schools, funeral ceremonies and

other public events; . . . .

1992 Tenn. Pub. Acts ch. 727 (emphasis added).

On its face, the Act is aimed directly at the regulation of aircraft noise. It states plainly the assertion that "helicopters disturb the peace and quiet and interrupt the enjoyment of the area by most tourists." 1992 Tenn. Pub. Acts, ch. 727, preamble. Since the regulation of aircraft noise is a subject preempted by federal law, the Act is invalid.

In its operation, the Act regulates aircraft in flight.

The Act implicitly seeks to regulate the operation of helicopters in flight. By declaring helicopter operations incompatible with residential development, the General Assembly was obviously focusing on the operation of helicopters in flight because the heliports are not located in residential areas. Nor are they located near cemeteries or schools, or any area where "public events" are held. Because the heliports are not located near any of these areas, the

helicopters could disturb them only while in flight to and from the Park.

The only other concern cited by the statute, apart from noise, was a vaguely worded "safety hazard to residents in their homes and to motor vehicle operators on the area roads and highways." Since the safety of aircraft in flight is preempted by the Federal Aviation Act, Chapter 727 can only be directed at safety during landings and takeoffs at the heliports. Takeoff and landings, however, are properly part of the regulation of safety and noise under the Federal Aviation Act. This was true in City of Burbank, where the Court, noting "a variety of regulations relating to takeoff and landing procedures" had been promulgated, said that the balance and interdependence of the safety, efficiency, and protection of persons on the ground "requires a uniform and exclusive system of federal regulation if congressional objectives underlying the Federal Aviation Act are to be fulfilled." 411 U.S. at 639. Thus, the Court

recognized the statute's preemption of safety issues relating to the takeoffs and landings of aircraft.

In relying on the FAA opinion, the Tennessee Supreme Court abdicated its duty to review the statute.

The Tennessee Supreme Court's reliance upon a letter of the FAA stating that the statute was not preempted by federal law is misplaced.[2] The FAA letter, itself, does not give Chapter 727 a clean bill of health. It cautions that Chapter 727 may be preempted in certain circumstances, such as preventing helicopter operations at general-service airports, which would effectively be a regulation of the helicopters themselves, rather

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[2] The letter, as filed with the defendants' motion to dismiss is unsigned. Nor does it contain a closing, indicating that the full text was never produced. At least a portion of the letter filed with the motion to dismiss was not included in the defendants' appendix to the Tennessee Supreme Court, and another section appears to have been covered over by another page during copying, indicating, again, that the full text of the letter was not available to that court.

than a regulation of the location of heliports. (citing San Diego Unified Port Dist. v. Gianturco, 651 F.2d 1306, 1311-1312 (9th Cir. 1981) cert. enied sub nom. Dept of Transportation v. San Diego Unified Port Dist., 455 U.S. 1000 (1982).

The Tennessee court's citation of Chevron U.S.A. v. Natural Resources Defense Council, 467 U.S. 837, 844 (1984), is inapposite, because the agency interpretation involved in that case related to promulgating regulations, not to determining whether its governing Act preempted state law. The Chevron Court confirmed that the judiciary, not an administrative agency, is the final authority on issues of statutory construction. 467 U.S. at 843, n. 9. Besides, the FAA was not asked to interpret its governing statute, but to construe the Tennessee Act.

The well-settled rule is that determining whether a state statute is preempted by federal law is essentially an inquiry into to the intent of Congress. English v. General Electric Co., 496

U.S. 72 (1990). To discern this intent, the courts examine the explicit statutory language and purpose of the statute. Ingersoll-Rand Co. v. McClendon, 498 U.S. 133 (1990). They do not examine the agency's opinions. Preemption is, thus, a matter for the courts to decide. It is not a question for an administrative agency. Thus, by deferring to the opinion of the FAA, the Tennessee Supreme Court abdicated its responsibility.

THE STATUTE VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION BECAUSE IT IMPERMISSIBLY DISTINGUISHES BETWEEN BUSINESSES OPERATING IN SIMILAR CIRCUMSTANCES.

A classification between similarly situated persons violates the equal protection of the laws.

The Equal Protection Clause is "essentially a direction that all persons similarly situated should be treated alike." Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432, 439 (1985). Just as with individuals, similarly situated businesses

may not be classified for different treatment. As stated in Cotting v. Kansas City Stock Yards Co., 183 U.S. 79 (1901),

> legislation by which one individual, or even one set of individuals, is selected from the others doing the same business in the same way, and subjected to regulations not cast upon them, is a discrimination forbidden by the constitutional provision which obtains both in the Constitution of Kansas and in that of the United States, to the effect that the equal protection of the laws is guaranteed to all.

Id. at 109.

A classification will be upheld against an equal protection challenge, nevertheless, where "there is a rational relationship between the disparity of treatment and some legitimate governmental purpose" Heller v. Doe, ___ U.S. ___, 113 S.Ct. 2637, 2642 (1993). There must be a reasonably conceivable state of facts that could provide a rational basis for the classification." FCC v. Beach Communications, Inc., ___ U.S. ___, 113 S.Ct. 2096, 2101 (1993). The standard of rationality, however, "must find some footing in the realities of

the subject addressed by the legislation." Heller, supra, 113 S.Ct. at 2643. A local government, therefore, "may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." Cleburne, supra, 473 U.S. at 446.

There is no reasonably conceivable set of facts to justify treating heliports inside the nine-mile zone differently from heliports in any other congested area of the state.

In Hooper v. Bernalillo County Assessor, 472 U.S. 612 (1985), the Court held that a statute giving tax exemption to veterans residing in the state before a certain date violated the Equal Protection Clause because it was not rationally related to achieving the asserted goal of giving tax relief to veterans. The statute did not give relief to veterans who came to reside in the state after the specified date. Thus, the asserted goal of the statute to benefit resident veterans was overinclusive because the effect of the statute was to benefit only a portion of the state's resident veterans.

In the case at hand, the statute is similarly overinclusive. It asserts a goal of protecting tourists and residents from the hazards of heliports. In its operation, however, it only protects those tourists and residents within the nine-mile zone from those hazards.[3] Tourists and residents in all other parts of the state remain unprotected.

Although the statute's preamble declares that the growth in the three counties affected by Chapter 727 presents "unique problems," the only problems the statute attributes to heliports in those counties are noise and safety hazards. Even if heliports generally do present such concerns, there can be no conceivable set of facts by which the legislature could have believed that the problems posed by heliports inside the nine-mile zone to traffic, residents, schools or funerals, could be any

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[3] In Cotting, the statute was ostensibly statewide in its application, but the Court did not hesitate to examine its actual effect of imposing greater burdens on one business over others. 183 U.S. at 103.

different from those outside the zone.[4] Nothing about its proximity to the Park changes the nature of a heliport. Its operation is the same near the Park or far from it.

The statute imposes legal burdens on the plaintiff's business not imposed on similar businesses outside the nine-mile zone.

In Lindsey v. Normet, 405 U.S. 56 (1972), the Court found a violation of equal protection where a statute placed greater burdens on pursuing an appeal in one type of case than for any other type of case. As the Court stated, "[w]hen an appeal is afforded . . . , it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause." 405 U.S. at 77.

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[4] If the General Assembly had made this law applicable to all commercial heliports in congested areas in all counties of the state, it might be valid. The General Assembly has taken such action relating to automobile junkyards (Tenn. Code Ann. § 54-20-101 et seq.), and to billboards. Tenn. Code Ann. § 54-17-108–110. Unlike Chapter 727, however, these statutes are applicable to all counties statewide.

Chapter 727 is a taking of the plaintiffs' property. It declares all heliports within the nine-mile zone to be nuisances and simultaneously takes away the right of the their owners to continue operations as a nonconforming use. The right of all property owners to continue a nonconforming use, however, had been recognized in Tenn. Code Ann. § 13-7-208. Just as an appeal in a certain type of case was unconstitutionally burdened in Lindsey, heliport owners are denied a right granted to all other landowners. For the legislature to grant the right, then to remove it only for some businesses, violates equal protection.

Indeed, the right is removed not for all heliport owners, but only for heliport owners inside the zone. In Lindsey, the asserted rationale for the statute was that it would discourage frivolous appeals. The Court rejected this argument by pointing out that the statute would just as surely discourage legitimate appeals. In the case at hand, neither the State nor the courts ever offer a reason to support the Act's classification. If,

however, it is because heliports are considered nuisances, there is still no justification for heliports outside the nine-mile zone not also to be considered nuisances.

The Tennessee courts failed to apply the rational-basis test under the Equal Protection Clause.

The Tennessee Supreme Court abdicated its responsibility to review the statute under the appropriate legal standard by failing to state the basis on which the statute classified heliports inside the nine-mile zone differently from those outside the zone. Although the court said "We have concluded that there is such a set of facts which justifies the classification," (slip op. at 18), the court never said what that set of facts is. Merely saying there is a difference does not make it so, as pointed out in Richardson v. Belcher, 404 U.S. 78, 83 (1971), where the court said that "a statutory discrimination between like classes cannot be rationalized by assigning them different labels." Nowhere, at anytime, has either the defendant

or the court ever offered a statement, even a conjecture, as to why the problems of heliports are greater within the nine-mile zone than they are outside it, or why heliports inside the zone should be declared nuisances, while those outside it should not, or why a state statute allowing property owners to continue the nonconforming use of their property should be suspended only for heliport owners inside the nine-mile zone.

Even if the legislature is not required to explain its classifications, the court *is* required to state the rational basis supporting the statute. Mr Riggs is being ordered by the government to move his business to a significantly less profitable location. Under the rational basis test, he is at least entitled to a reason.

THE STATUTE VIOLATES DUE PROCESS BECAUSE IT IS NOT RATIONALLY RELATED TO A LEGITIMATE STATE INTEREST IN THAT IT CANNOT REASONABLY ACHIEVE THE STATUTE'S OBJECTIVES.

A statute burdening property rights will pass constitutional muster if it is rationally related to a legitimate state interest. Martinez v. State of California, 444 U.S. 277 (1980). As mentioned in Heller, supra, the standard of rationality "must find some footing in the realities of the subject addressed by the legislation." 113 S.Ct. at 2643. Chapter 727 lacks a footing in the realities of the subject because it fails to consider that helicopters in flight, as well as helicopters landing and taking off, may present noise and safety concerns, which are only increased when they are forced to traverse greater distances.

A statute is obviously not rationally related to its objective if it cannot reasonably achieve that objective. Chapter 727 fails even this minimal constitutional test. As mentioned above, on its face, the Act indicates a concern for the interference of heliports with the "peace and quiet" of residents and tourists and for the "interference with "the operation of

schools, funeral ceremonies and other public events" as well as for the safety of residents and tourists. There is no rational basis for a trying to reduce noise and safety hazards with a restriction against *landing* helicopters within nine miles of the Park, where the helicopters are not prohibited from *flying* within that nine-mile zone. Moving the heliports farther away from the Park only increases the area over which they must fly to get to the Park. Increasing the area over which they fly must necessarily increase the potential noise and safety hazards and the "interference," as the preamble calls it, with schools, funerals and public events.

In addition, although the Act professes a concern for residential areas and schools, it would move the heliports out of the commercial areas, where they are currently located, into the very residential areas and school zones the statute pretends to protect. Thus, the Act would achieve the opposite of its intended effect. It, therefore, bears no rational relationship to

a legitimate state interest. There is no rational relation between moving the heliports and reducing noise and safety hazards within the nine-mile zone.

CONCLUSION

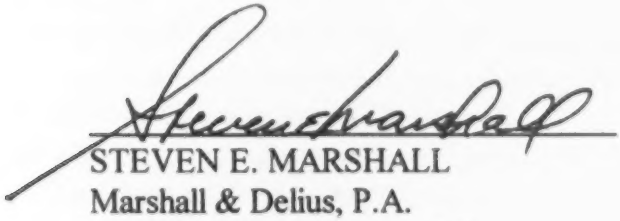
Both on its face and in its operation, Chapter 727 is clearly aimed at regulating aircraft noise, which subject is preempted by federal law.

The Act is a local zoning ordinance disguised as a general state statute. It applies only to a nine-mile zone in three counties, but, at the same time, exempts itself from the statutes governing the treatment of nonconforming uses in local zoning.

Chapter 727 creates a classification between heliports inside the nine-mile zone and those outside the zone. The noise and safety hazards cited by the statute are just as applicable to heliports outside the zone as to those inside it. Thus, the Act violates the Equal Protection Clause by discriminating against similarly situated businesses.

In fact, because the Act would force the sightseeing helicopters to fly a greater distance to view the Park, it would increase the very hazards that the Act seeks to reduce. It is, therefore, not rationally related to a legitimate state interest, and, consequently, violates the Due Process Clause. Because the Tennessee Supreme Court failed to apply the appropriate legal analysis to these key constitutional questions, that decision should be reversed and the case remanded for further proceedings.

Respectfully submitted,



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United States Constitution

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JURISDICTION

28 U.S.C. § 1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

UNITED STATES CONSTITUTION

Article V - Due Process

No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property

be taken for public use, without just compensation.

Article VI - Supreme Law of the Land.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof ; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, and Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Amendment XIV, section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due

process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

PUBLIC ACTS, 1992
CHAPTER NO. 727

AN ACT to amend Tennessee Code Annotated, Title 42, Chapter 1, relative to helicopters in certain counties.

WHEREAS, the Great Smoky Mountains National Park is an invaluable natural resource for this state and for the nation, containing scenery of breathtaking beauty and majesty and a great variety of scenic and ecologically important flora and fauna; and

WHEREAS, millions of people have visited the Great Smoky Mountains National Park to enjoy its natural beauty; and

WHEREAS, a tourism industry has grown in the Tennessee counties in which part of the Great Smoky Mountains National Park is located; and

WHEREAS, a large number of people have taken up residence in these counties to enjoy the natural scenery and to work in the tourism industry and other industries thriving in those areas; and

WHEREAS, because of this influx of people, a number of towns have grown into cities, creating the advantages and problems that arise with the growth of urban populations; and

WHEREAS, these counties and their citizens have invested great sums of money to provide lodging, restaurants and entertainment to attract the business of these people visiting the Great Smoky Mountains National Park; and

WHEREAS, the economies of these counties rely on income generated by the tourist industry; and

WHEREAS, the scenic beauty of the Great Smoky Mountains National Park has attracted a number of helicopter operations that carry tourists from heliports located on the main roads near population centers in these counties to view the park

from the air; and

WHEREAS, the use of this land for helicopter operations is inconsistent with the development of the tourist industry in those counties because the helicopters disturb the peace and quiet and interrupt the enjoyment of the area by most tourists; and

WHEREAS, the use of this land for helicopter operations is inconsistent with the residential development in those counties because the helicopters pose a safety hazard to residents in their homes and to motor vehicle operators on the area roads and highways, disturb the peace and quiet and interrupt the enjoyment of the area by residents in their homes and places of work, and interfere with the operation of schools, funeral ceremonies and other public events; and

WHEREAS, the counties in which the Great Smoky Mountains National Park is located experience a unique problem with helicopter operations that carry tourists because

the size and inaccessibility of the park encourages sightseeing by helicopter; and

WHEREAS, helicopter flights to and from health care institutions provide an important medical benefit for residents and visitors and can often mean the difference between life and death of a patient, so that the public benefit from such flights outweighs the problems of noise and safety; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Tile 42, Chapter 1, is amended by adding the following sections as a new part.

SECTION 2. As used in this act, unless the context otherwise requires:

(1) "Heliport" means land from which helicopters take off and land. Heliport does not include heliports operated by a health care institution as defined in Section 68-11-102(5) or land on which a helicopter

makes a landing required by an emergency; and

(2) "Tourist resort county" means a county having more than five percent (5%) of its territory located within the boundaries of a national park established pursuant to 16 U.S.C. § 403.

SECTION 3.

(a) Land in a tourist resort county within nine (9) miles of the boundary of a national park established pursuant to 16 U.S.C. § 403 cannot be used as a heliport.

(b) The department of transportation shall not issue or renew licenses pursuant to chapter 2 of this title for any heliport located on land subject to the prohibition in subsection (a), except that licenses may be renewed for heliports allowed to continue to operate under Section 4 of this act.

SECTION 4. Notwithstanding the provisions of Section

13-7-208 or any other law to the contrary, a heliport operating as of the effective date of this act that is in violation of Section 3(a) is declared a public nuisance and shall be abated, removed or changed to conform with this act by July 1, 1994. Such heliports may continue to operate until that date provided:

(a) The heliport is not extended or expanded; and

(b) If the use of the land or any portion thereof as a heliport is discontinued for a period of six (6) months or changed, any future use of the land shall be in conformity with this act.

SECTION 5. Any heliport operated in violation of this part shall be deemed a public nuisance causing irreparable injury to the state, the county in which the heliport is located, municipalities located in that county and the residents of the county. In addition to any other remedies or rights of action possessed by any person or governmental unit, persons who

reside on land subject to the prohibitions in this act shall have a private right of action against a person operating a heliport in violation of this act and shall have the right to seek injunctive relief as allowed by law, to recover damages for nuisance, and to recover costs and attorneys fees if the resident is the prevailing party.

SECTION 6. The provisions of this act shall not affect existing or future land use restrictions adopted by an incorporated city or town in a tourist resort county greater than those stated in this act.

SECTION 7. The provisions of this act shall not apply to any county which has county-wide zoning. If a county adopts county-wide zoning after the effective date of this act, then the provisions of this act shall not be applicable to such county.

SECTION 8. If any provision of this act or the application thereof to any person or circumstance is held invalid,

such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 9. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: April 9, 1992.

FILED
MARCH 19, 1997

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

BOBBY RIGGS and M-HELICOPTERS OF TENNESSEE, INC.,	)
Plaintiffs-Appellees,	)
Vs.	)
CHARLES W. BURSON, Tennessee Attorney General and Reporter, CARL JOHNSON, Commissioner of the Tennessee Department of Transportation,	)
Defendants-Appellants.	)

O P I N I O N

COURT OF APPEALS REVERSED;
TRIAL COURT JUDGMENT
REINSTATED.

ANDERSON, J

We granted this appeal to decide whether a state statute[1] prohibiting the use of land for a heliport within nine miles of the boundary of a national park is constitutional and, if so, whether it is preempted by federal law.

The trial court held the statute was constitutional and was a regulation of the use of land and therefore was not preempted by the Federal Aviation Act. The court, therefore, dismissed the plaintiffs' action to enjoin enforcement of the statute. The Court of Appeals reversed, deciding that it must accept as true the complaint's legal conclusions as to preemption and constitutionality, and remanded the case for an evidentiary hearing.

For the reasons that follow, we conclude that the state statute does not violate due process or equal protection under the Tennessee or United States Constitutions; does not suspend general law in violation of the Tennessee Constitution; and is

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1 Tenn. Code Ann. § 42-8-101 through -105 (1993).

not preempted by federal law. We have further determined that in addressing the motion to dismiss, the trial court was not required to accept as true the plaintiffs' asserted legal conclusions that the law lacked a rational basis and was preempted.

Accordingly, the judgment of the Court of Appeals is reversed, and the judgment of the trial court is reinstated.

BACKGROUND

The plaintiffs, Bobby Riggs and M-Helicopters of Tennessee, Inc., own and operate a heliport in Sevier County, Tennessee, from which they launch helicopters which carry tourists to, over, and from the Great Smoky Mountains National Park. The heliport is located within nine miles of the boundary of the national park.

In early 1992, the Tennessee legislature enacted Tenn. Code Ann. § 42-8-101, et seq., which prohibited the helicopter touring operations of the plaintiffs after July 1, 1994. In June

of 1994, the plaintiffs filed a declaratory action in the Sevier County Circuit Court challenging the constitutionality of the statute, which provides in part:

> **42-8-102. Certain land not to be used as heliport-- Heliports on such land.**--(a) Land in a tourist resort county within nine (9) miles of the boundary of a national park established pursuant to 16 U.S.C. §403 cannot be used as a heliport.
>
> . . . .
>
> **42-8-103. Violations--Heliport deemed nuisance--Abatement, removal, conformity.** -- Notwithstanding the provisions of § 13-7-208 or any other law to the contrary, a heliport operating as of April 23, 1992, that is in violation of § 42-8-102(a) is declared a public nuisance and shall be abated, removed or changed to conform with this chapter by July 1, 1994. . . . .

(Emphasis added).

The plaintiffs alleged that the statute violated due process and equal protection under the United States and Tennessee Constitutions; that it suspended general law in violation of article XI, section 8 of the Tennessee Constitution;

and that it was preempted by the Federal Aviation Act. The plaintiffs also argued that they were permitted to maintain a non-conforming use pursuant to Tenn. Code Ann. § 13-7-208(b). The defendants filed a motion to dismiss the complaint for failure to state a claim upon which relief could be granted.

After reviewing the statute and its preamble, and hearing arguments from both parties, the trial court granted the defendants' motion to dismiss the complaint. The trial court found that the statute did not violate the Tennessee or United States Constitutions; that it was a regulation of the use of land that was not preempted by federal law; and that the plaintiffs were not entitled to relief under Tenn. Code Ann. § 13-7-208(b) as a non-conforming use.

On appeal, the Court of Appeals apparently accepted the plaintiffs' conclusory legal allegations as true and held:

> [t]he allegations of the complaint set forth the elements for claims of preemption, due process and equal protection, and an unconstitutional suspension of general law. Our decision is not

> to be construed to say the statutes are free or not free of constitutional defects. We are remanding the case for the parties to be afforded the opportunity to introduce any evidence which is material and pertinent in considering the validity of the statute.

We granted the defendants' appeal to address the constitutionality of the statute, the federal preemption question, and to clarify the standard to be applied by a court in addressing a motion to dismiss a complaint which contains conclusory assertions that a statute is unconstitutional.

MOTION TO DISMISS

The first question we must address is the standard to be applied by a court in addressing a motion to dismiss a complaint which contains legal conclusions. We begin our analysis by examining the purpose of a motion to dismiss a complaint for failure to state a claim upon which relief can be granted. Such a motion pursuant to Tenn. R. Civ. P. 12.02(6) tests the legal sufficiency of a complaint; it admits the truth of all relevant and material allegations, "but asserts that such facts do not

constitute a cause of action as a matter of law." Pursell v. First American National Bank et al., ___ S.W.2d ___ (Tenn. 1996)(emphasis added).

In ruling on such a motion, courts must construe the allegations in the plaintiff's favor and accept allegations of fact as true. However, the inferences to be drawn from the facts or the legal conclusions set forth in a complaint are not required to be taken as true. Dobbs v. Guenther, 846 S.W.2d 270, 273 (Tenn. App. 1992).

The plaintiffs' allegations that the statute violated due process and equal protection under the United States and Tennessee Constitutions and suspended general law in violation of the Tennessee Constitution were legal conclusions that should not have been taken as true. As recognized by both parties, these constitutional issues required a determination of whether the legislature had a rational basis for passing the statute. In this regard, if any reasonable justification for the law

may be conceived, it must be upheld by the courts. State v. Tester, 879 S.W.2d 823, 830 (Tenn. 1994); see Newton v. Cox, 878 S.W.2d 105, 110 (Tenn.), cert. denied, 115 S.Ct. 189, 130 L.Ed. 2d 122 (1994).

Here, the trial court correctly applied this analysis in the context of the defendant's motion to dismiss under Tenn. R. Civ. P. 12.02(6). In Lilly v. Smith, 790 S.W.2d 539 (Tenn. App. 1990), for example, the plaintiff raised an equal protection challenge to the State's grade policy for admission into state nursing schools. The trial court granted the defendant's motion to dismiss under Rule 12.02(6). The Court of Appeals upheld the dismissal upon finding that there was a "rational relationship between the admissions requirement and legitimate state policy."

Likewise, the plaintiffs' assertion that the statute was preempted by the Federal Aviation Act was a legal conclusion that should not have been accepted as true. Whether a federal

law expressly or implicitly preempts a state law requires an investigation of Congress's intent in passing federal legislation. See Cipollone v. Liggett Group, Inc., 505 U.S. 504, 112 S.Ct. 2608, 2617, 120 L.Ed.2d 407 (1992). Here, both parties argued their interpretations of the Federal Aviation Act and offered supporting legal authority for whether the Act expressly or implicitly preempted the statute. The trial court properly addressed the preemption issue in the context of the motion to dismiss, without an evidentiary hearing. See e.g., Broyde v. Gotham Tower, Inc., 13 F.3d 994 (6th Cir.), cert. denied, 114 S.Ct. 2137, 128 L.Ed.2d 866 (1994).

Accordingly, we conclude that the Court of Appeals erred in accepting the legal conclusions in the plaintiffs' complaint as true and in remanding the case for an evidentiary hearing, and that the trial court acted correctly in addressing all the legal issues in the motion to dismiss.

PREEMPTION

The preemption doctrine stems from the Supremacy Clause of the United States Constitution: "[t]he Constitution and laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land." U.S. Const., art. VI, cl. 2. A state law which conflicts with federal law, therefore, is preempted or "without effect." See Maryland v. Louisiana, 451 U.S. 725, 746, 101 S.Ct. 2114, 2128, 68 L.Ed.2d 576 (1981).

The plaintiffs charged that Tenn. Code Ann. § 42-8-101, et seq., is aimed at the "flight of aircraft and aircraft noise" and is therefore preempted by the Federal Aviation Act. See 49 U.S.C. §40101-41901 (Supp. 1996).[2] The defendants maintained, and the trial court found, that the statute is not preempted because it relates to the use of land and not the flight of aircraft. The Court of Appeals, however, ruled that the

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2 The Federal Aviation Act of 1958, as amended by the Noise Control Act of 1972, was formerly codified at 49 U.S.C. §§1301-1357.

elements of a preemption claim had been alleged and that an evidentiary hearing was required to determine whether the statute is directed at aircraft noise.

Consideration of preemption issues under the Supremacy Clause "start[s] with the assumption that the historic police powers of the States [are] not to be superseded by ... Federal Act unless that [is] the clear and manifest purpose of Congress." Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230, 67 S. Ct. 1146, 1152, 91 L.Ed. 1447 (1947). The purpose of Congress in enacting a federal law is, therefore, the "ultimate touchstone" of preemption analysis. Retail Clerks Intern. Ass'n v. Schermerhorn, 375 U.S. 96, 103, 84 S.Ct. 219, 222, 11 L.Ed.2d 179 (1963). The intent of Congress may be "explicitly stated in the statute's language or implicitly contained in its structure and purpose." Jones v. Rath Packing Co., 430 U.S. 519, 525, 97 S.Ct. 1305, 1309, 51 L.Ed.2d 604 (1977). However, where there is no express preemption provision in a

federal statute, a state law is implicitly preempted if that law actually conflicts with the federal law, see Pacific Gas & Elec. Co. v. State Energy Resources Conservation and Development Comm'n, 461 U.S. 190, 204, 103 S.Ct. 1713, 1722, 75 L.Ed.2d 752 (1983), or if the federal law so thoroughly occupies the legislative field "as to make reasonable the inference that Congress left no room for the States to supplement it." Fidelity Federal Savings & Loan Ass'n v. De la Cuesta, 458 U.S. 141, 153, 102 S.Ct. 3014, 3022, 73 L.Ed.2d 664 (1982); see also Watson v. Cleveland Chair Co., 789 S.W.2d 538, 542 (Tenn. 1989) (discussing parameters of preemption doctrine).

The Federal Aviation Act reflects congressional intent to place exclusive authority for regulating the airspace above the United States with the Federal Aviation Administration. 49 U.S.C. §40103(b)(1).

Applying the foregoing principles, the plaintiffs concede that the Federal Aviation Act does not expressly preempt Tenn.

Code Ann. § 42-8-101, et seq., but instead claim that the law was implicitly preempted under the rule established in City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624, 93 S.Ct. 1854, 36 L.Ed.2d 547 (1973). There, the City of Burbank adopted an ordinance making it unlawful for jet aircraft to take off from the Hollywood-Burbank airport between the hours of 11:00 p.m. and 7:00 a.m. The lower federal courts found that the curfew sought to regulate aircraft noise by restricting flights and held that the ordinance was preempted by federal law. Id., 411 U.S. at 626, 93 S.Ct. at 1856.

The Supreme Court agreed. The Court said that the Federal Aviation Act gave the Federal Aviation Administration control over the regulation of aircraft noise, and that it and other federal agencies had "comprehensively regulated" in this area. Thus, the Court concluded that the "pervasive nature of the scheme of federal regulation of aircraft noise" preempted the City of Burbank's curfew, which had sought to regulate

noise by restricting flights. Id., 411 U.S. at 633-634, 93 S.Ct. at 1859-1860.

In claiming that the statute in question is aimed at the regulation of "the flight of aircraft and aircraft noise," the plaintiffs rely in great measure on the implied preemption holding in City of Burbank, supra. The defendants, however, maintain that City of Burbank does not extend to state laws which, like this statute, regulate the use of land and not the flight or noise of aircraft. In this respect, the defendants note the limitation of City of Burbank as expressed by the dissenting justices:

> A local governing body could ... use its traditional police power to prevent the establishment of a new airport or the expansion of an existing one within its territorial jurisdiction by declining to grant the necessary zoning for such a facility. Even though the local government's decision in each case were motivated entirely because of the noise associated with airports, I do not read the Court's opinion as indicating that such action would be prohibited by the Supremacy Clause merely because the Federal Government has

> undertaken the responsibility for some aspects of aircraft noise control. Yet if this may be done, the Court's opinion surely does not satisfactorily explain why a local governing body may not enact a far less 'intrusive' ordinance such as that of the city of Burbank.

Id., 411 U.S. at 653, 93 S.Ct. at 1869 (Rehnquist, J., dissenting) (emphasis added).

Other jurisdictions have elaborated on this point and have limited the application of City of Burbank. In our own Sixth Circuit, in Gustafson v. City of Lake Angelus, 76 F.3d 778 (6th Cir.), cert. denied, 117 S.Ct. 81, 136 L.Ed.2d 39 (1996), the plaintiff claimed that ordinances which prohibited the operation of seaplanes on a lake near his home were preempted by the Federal Aviation Act. The district court agreed and granted summary judgment in favor of the plaintiff on the basis of City of Burbank. The Sixth Circuit reversed:

> [I]n the present case, an examination of the Federal Aviation Act and regulations concerning seaplanes and aircraft landing sites indicates that the designation of plane landing sites is not pervasively regulated by federal law, but instead

> is a matter left primarily to local control. In contrast to the pervasive scheme of federal regulation of aircraft noise found in Burbank, we fail to identify any language in the Act, the regulations promulgated pursuant to the Act, or the legislative history of the Act, which by implication preempts enforcement of the City's ordinances. . . .

Id., 76 F.3d at 784 (emphasis added). Accordingly, the Sixth Circuit concluded that "there is a distinction between the regulation of the navigable airspace and the regulation of ground space to be used for aircraft landing sites." Id., 76 F.3d at 789.

Similarly, in Condor Corp. v. City of St. Paul, 912 F.2d 215 (8th Cir. 1990), when a request to use the property as a heliport for helicopter services was denied by the city, Condor Corporation challenged the restrictions as preempted under the Federal Aviation Act. The district court denied relief, and the Eighth Circuit Court of Appeals affirmed: "We see no conflict between a city's regulatory power over land use, and the federal regulation of airspace, and have found no case recognizing a

conflict." Id., 912 F.2d at 215. See also Faux-Burhans v. County Com'rs of Frederick County, 674 F. Supp. 1172 (D. Md. 1987), aff'd., 859 F.2d 149 (4th Cir. 1988)(county restrictions on size and scope of private airfield not preempted).

In a state court case, Garden State Farms, Inc. v. Bay, 390 A.2d 1177 (N.J. 1978), the plaintiff sought to construct a heliport on property located near "a heavily traveled thoroughfare, opposite a residential neighborhood." Id., at 1179. An ordinance was adopted prohibiting the use of land in the area for a heliport because the "general quality of life would be adversely affected by low-level air traffic with its concomitant increased noise, air pollution and automobile traffic and its anticipated distraction and anxiety to residents." Id.

The New Jersey Supreme Court held the ordinance was not preempted by the Federal Aviation Act. The Court noted that the Act did not "reach down to the level of the location of small, relatively isolated, privately owned helistops or

heliports," and stressed that while "it is clear that state and local authority over the 'operation and navigation of aircraft' is supplanted by . . . federal regulation, . . . significant local power over ground operation of aircraft remains visible." Id., at 1180-1181 (emphasis added).

Returning to this case, an analysis of the Tennessee statute and its preamble indicates that the law regulates the use of land and not the flight of aircraft or the use of airspace. The law restricts "land in a tourist resort county within nine miles of the boundary of a national park" from being "used as a heliport." Tenn. Code Ann. § 42-8-102(a). The preamble to the law reflects that the Legislature had several interests under consideration including the noise, disruption and safety risks caused by locating heliports near main roads and heavily populated areas. It is clear that the police powers of the Legislature include restricting use of property if it is reasonably related to the public health, safety, and welfare. See Spencer-

Sturla Co. v. City of Memphis, 155 Tenn. 70, 83, 290 S.W. 608, 612 (1927). Our examination of the language of the statute indicates it is not expressly preempted by the Federal Aviation Act, and it does not establish a curfew or restrict flights in a manner that is implicitly preempted under the City of Burbank decision.

Our conclusion is shared by the Federal Aviation Administration, which stated in a letter offered in evidence by the defendants, that "the FAA has concluded that the statute as written is not preempted on its face by the express preemption provisions of section 105 of the Federal Aviation Act of 1958, as amended. . . . Likewise the statute is not preempted . . . by implication under the holding of City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624 (1973)." We observe that interpretations of statutes by administrative agencies are customarily given respect and accorded deference by courts.

Chevron U.S.A. v. Natural Resources Defense Council, 467 U.S. 837, 844, 104 S.Ct. 2778, 2782, 81 L.Ed.2d 694 (1984).

Accordingly, we agree with the persuasive federal and state authority that has upheld laws which restrict the use of land for the operation of helicopters or other aircraft. The plaintiffs seek to distinguish these cases as involving restrictions on future uses, and not, as in this case, an existing use. This distinction, however, does not alter our conclusion. First, a land use law, if otherwise constitutional, may permissibly restrict or eliminate an existing use of land. See 101A C.J.S. Zoning and Land Planning §157; Rives v. City of Clarksville, 618 S.W.2d 502, 508-509 (Tenn. App. 1981)("a zoning ordinance that restricts a future use and one that requires existing uses to stop after a reasonable time is not a difference in kind, but one of degree"). Second, although the preemption analysis may have differed if the statute eliminated an existing use based solely on aircraft noise, see Wright v. County of

Winnebago, 391 N.E.2d 772, 777 (Ill. App. 1979), the law, as we have discussed, is related to numerous legislative interests. See Gustafson, 76 F.3d at 791; Garden State Farms, 390 A.2d at 1180-1181.

Accordingly, we hold that Tenn. Code Ann. § 42-8-101, et seq., is not preempted by federal law under the Supremacy Clause of the United States Constitution. Having so held, we must now address whether the law withstands constitutional scrutiny.

DUE PROCESS

The plaintiffs charge that the statute lacks a rational basis and violates due process under the Fourteenth Amendment to the United States Constitution and article I, section 8 of Tennessee Constitution. The defendants counter that the law is rationally related to the health, safety, and welfare of tourists and residents in the tourist resort counties. The defendants point to the preamble to the law which reflects the Legislature's

concern with the rapid growth of tourism in the resort counties and the disruption and safety risks caused by locating heliports in heavily populated centers and near main roads.

This Court has held that the "law of the land" provision of article I, section 8 of the Tennessee Constitution "is synonymous with the due process clause of the Fourteenth Amendment to the United States Constitution." Newton v. Cox, 878 S.W.2d at 110; State ex rel. Anglin v. Mitchell, 596 S.W.2d 779, 786 (Tenn. 1980). Thus, unless a fundamental right is implicated, a statute comports with substantive due process if it bears "a reasonable relation to a proper legislative purpose" and is "neither arbitrary nor discriminatory." Newton v. Cox, 878 S.W.2d at 110.

Here, the parties recognize that the statute does not implicate a fundamental right, and that the "rational basis" analysis applies to the plaintiffs' due process challenge. Id.

Thus, the question we must address is whether the statute is reasonably related to a legitimate legislative purpose.

We begin our analysis with the presumption that an act of the General Assembly is constitutional. See Petition of Burson, 909 S.W.2d 768 (Tenn. 1995); Davis-Kidd Booksellers, Inc. v. McWherter, 866 S.W.2d 520 (Tenn. 1993). In evaluating a statute, we must indulge every presumption and resolve every doubt in favor of constitutionality. Petition of Burson, 909 S.W.2d at 775. We also recognize that the Legislature has the authority to enact laws for the public safety, comfort and welfare. Spencer-Sturla Co. v. City of Memphis, 155 Tenn. at 83, 290 S.W. at 612; see also Fallin v. Knox County Bd. of Com'rs, 656 S.W.2d 338 (Tenn. 1983).

The preamble to the statute reflects these legitimate legislative interests of public safety, comfort, and welfare. It notes that the growth of the tourist industry in the resort counties near the Great Smoky Mountains National Park has

attracted heliport operations of the sort owned and operated by the plaintiffs. Moreover, it indicates that the location of these heliports near heavily populated areas and main roads has, in the Legislature's determination, disturbed the peace and enjoyment of tourists and residents, interrupted enjoyment of the area by tourists, and created a safety risk to tourists and residents. The statute seeks to prevent this harm not by regulating where or when helicopters may fly, but by restricting where land may be used to locate heliports.

In Gustafson, supra, the Sixth Circuit addressed whether the ordinance prohibiting the operation of seaplanes on a lake survived due process scrutiny and determined that its review was limited to "whether the legislative action [was] rationally related to legitimate land use concerns." The court concluded that the city's concern with the "noise, danger, apprehension of danger, . . . destruction of property values, and interference

with other lawful uses . . . fulfill[ed] the requirements of this test." Id., 76 F.3d at 791.

Similarly, we conclude that the restriction on the location of heliports contained in this statute is reasonably related to the legitimate legislative interests of securing the public safety, comfort, and welfare. The plaintiffs' arguments that there is no evidence in the record to establish a genuine safety risk from helicopter operations, and that the law will increase any potential risk and disruption by forcing longer flights, do not establish that the statute is irrational. To the contrary, under the rational basis test, specific evidence is not necessary to show the relationship between the statute and its purpose. See Newton v. Cox, 878 S.W.2d at 110. Rather, this Court asks only whether the law is reasonably related to proper legislative interests. Id. We conclude that it is.

EQUAL PROTECTION

This Court has said that "[b]oth the United States and Tennessee Constitutions guarantee to citizens the equal protection of the laws." Brown v. Campbell County Bd. of Educ., 915 S.W.2d 407, 412 (Tenn. 1995), cert. denied, 116 S.Ct. 1852, 134 L.Ed.2d 952 (1996). Article I, section 8 and article XI, section 8 of the Tennessee Constitution confer the same protections as the Fourteenth Amendment to the United States Constitution. See Brown v. Campbell County Bd. of Educ., 915 S.W.2d at 413.

The plaintiffs allege that the statute improperly classifies helicopter operations within nine miles of the Great Smoky Mountains National Park from all others in the state of Tennessee in violation of equal protection of the laws. They argue that "the failure of the statute is that it does not attempt to apply the legislature's concern for noise and safety to all the commercial heliports in the state." On the other hand, the

defendants maintain that the statute's classification is reasonably related to a legitimate legislative interest and therefore valid.

In Tennessee Small School Systems v. McWherter, 851 S.W.2d 139, 153 (Tenn. 1993), we said that "[t]he concept of equal protection espoused by the federal and of our state constitutions guarantees that 'all persons similarly circumstanced shall be treated alike.'" (quoting F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415, 40 S.Ct. 560, 562, 64 L.Ed. 989 (1920)). Things which are different in fact or opinion are not required by either Constitution to be treated the same. Tennessee Small School Systems, 851 S.W.2d at 153 (citing, Plyler v. Doe, 457 U.S. 202, 216, 102 S.Ct. 2382, 2394). In this regard:

> The initial discretion to determine what is 'different' and what is 'the same' resides in the legislatures of the States, and legislatures are given considerable latitude in determining what groups are different and what groups are the same. . . . In most instances the judicial inquiry into the legislative choice is limited to whether

> the classifications have a reasonable relationship to a legitimate state interest. . . .

851 S.W.2d at 153 (citations omitted).

We have consistently followed the framework developed by the United States Supreme Court, which, depending on the nature of the right asserted or a class of persons affected, applies one of three standards of scrutiny: (1) strict scrutiny, (2) heightened scrutiny, and (3) reduced scrutiny or the rational basis test. Newton v. Cox, 878 S.W.2d at 109. Strict scrutiny analysis is required "only when [a legislative] classification interferes with the exercise of a 'fundamental right' or operates to the peculiar disadvantage of a 'suspect class.'" Id.

Here, the parties agree that the statute does not interfere with a fundamental right nor does it involve a suspect class; thus, like the due process challenge, the equal protection analysis of this state statute involves the rational basis test. Under this standard, "[i]f some reasonable basis can be found for the classification [in the statute] or if any state of facts may

reasonably be conceived to justify it, the classification will be upheld." Tennessee Small School Systems v. McWherter, 851 S.W.2d at 153; Newton v. Cox, 878 S.W.2d at 110. This standard, compared to the heightened or strict scrutiny, places upon those challenging a statute "the greatest burden of proof." Brown v. Campbell County Bd. of Educ., 915 S.W.2d at 413.

As we have discussed, the statute restricts the location of heliports within nine miles of the Great Smoky Mountains Park in an effort to achieve legitimate interests related to the public safety, health, and welfare. The preamble to the statute indicates that the Great Smoky Mountains National Park is "an invaluable natural resource" which has attracted growing numbers of tourists and residents. It also states that locating heliports in the heavily populated areas and near main roads poses a "unique problem," as it creates a disruption and safety risk to tourists and residents. Although the plaintiffs contend that there is no evidence to support classifying helicopter

operators within nine miles of the park differently from any others in Tennessee, such evidence is unnecessary; the relevant inquiry is whether there is a reasonably conceivable set of facts to justify the classification within the statute. We have concluded that there is such a set of facts which justifies the classification.

SUSPENSION OF LAWS

Article XI, section 8 of the Tennessee Constitution provides:

> General laws only to be passed. The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights privileges, [immunities] or exemptions other than such as may be by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law.

The plaintiffs charge that the statute suspended general law in violation of article XI, section 8 of the Constitution.

Specifically, the plaintiffs argue that the law suspended Tenn. Code Ann. § 13-7-208(b), which provides for the continuation of non-conforming uses following the enactment of zoning ordinances, Tenn. Code Ann. § 42-2-211, which governs the licensing of airports, and the general "right to earn a livelihood."[3] The defendants maintain that the statute does not suspend a general law and, in any event, is rationally related to legitimate legislative interests.

Article XI, section 8 is implicated when a statute "contravene[s] some general law which has mandatory statewide application." Civil Service Merit Board v. Burson, 816 S.W.2d 725, 727 (Tenn. 1991); see Knox County ex rel. Kessell v. Lenoir City, 837 S.W.2d 382 (Tenn. 1992). If a statute does suspend a general law, article XI, section 8 is not violated unless it creates classifications which are capricious,

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3 The only claim in the plaintiffs' complaint was that Tenn. Code Ann. § 42-8-101, et seq., suspended Tenn. Code Ann. § 13-7-208(b).

unreasonable, or arbitrary. Civil Service Merit Board, 816 S.W.2d at 727. If any reason can be conceived to justify the classification, it will be upheld as reasonable. Stalcup v. City of Gatlinburg, 577 S.W.2d 439 (Tenn. 1978).

We need not determine whether the provisions cited by the plaintiffs are laws with mandatory statewide application. As already discussed, article XI, section 8 is commonly cited as one of two provisions which guarantee equal protection of the law under the Tennessee Constitution. The analysis for determining whether a statute suspends a general law in violation of the Tennessee Constitution is similar to that for determining whether there is a rational basis for a classification. As we have held, the statute, and the classification therein, is rationally related to several legitimate legislative interests. Thus, we conclude that it does not violate article XI, section 8 of the Tennessee Constitution.

TENN. CODE ANN. §13-7-208(b)

Finally, the plaintiffs argue that they have a statutory right to maintain their non-conforming use after the enactment of the statute. They rely on Tenn. Code Ann. § 13-7-208(b), which states:

> In the event that a zoning change occurs in any land area where such land area was not previously covered by any zoning restrictions of any governmental agency of this state or its political subdivisions, and such zoning restrictions differ from zoning restrictions imposed after the zoning change, then any industrial, commercial, or business establishment in operation, permitted to operate under zoning regulations or exceptions thereto prior to the zoning change shall be allowed to continue in operation and be permitted; provided, that no change in the use of land is undertaken by such industry or business.

The trial court held that the plaintiffs were not entitled to relief under this section and the Court of Appeals affirmed. The Court of Appeals held that the statutory provision was limited to municipal zoning ordinances and that, in any event, the provision was specifically addressed and rejected by the statute.

A basic principle of statutory construction is to ascertain and give effect to legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope. Owens v. State, 908 S.W.2d 923, 926 (Tenn. 1995). This means examining the language of a statute and applying its ordinary and plain meaning. Id. Moreover, we must presume that the Legislature knows of its prior enactments and knows of the existing state of the law at the time it passes legislation. Wilson v. Johnson County, 879 S.W.2d 807, 810 (Tenn. 1994).

As noted by the Court of Appeals, the statute specifically excluded the provisions of Tenn. Code Ann. § 13-7-208(b). See Tenn. Code Ann. § 42-8-103, which clearly states: "Notwithstanding the provisions of §13-7-208 or any other law to the contrary . . . ." The plain language of the statute provides that heliports which did not conform to the nine-mile restriction were to be eliminated within the time period set forth in the statute. Moreover, the terms of the statute specifically reject

the notion that a non-conforming use could continue under any other provision of law. We conclude that the Legislature intended to exclude Tenn. Code Ann. § 13-7-208(b). It follows that the plaintiffs are not entitled to relief.

CONCLUSION

For the foregoing reasons, we hold that Tenn. Code Ann. § 42-8-101, et seq., does not violate either the United States or Tennessee Constitutions and that the trial court properly granted the defendants' motion to dismiss. The judgment of the Court of Appeals is reversed, and the judgment of the Sevier County Circuit Court is reinstated. Costs of the appeal are taxed to the plaintiffs.

RILEY ANDERSON, JUSTICE

Concur:

Birch, C.J.
Drowota and Reid, JJ.

PUBLISHER'S NOTE :

ORIGINAL PAGINATION IS NOT CONTINUOUS.

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. 97-

IN THE
Supreme Court of the United States
Term, 1997

BOBBY RIGGS, and M-HELICOPTERS OF TENNESSEE, INC.,

Petitioners

vs.

CHARLES W. BURSON, Tennessee Attorney General and Reporter, CARL JOHNSON, Commissioner of the Tennessee Department of Transportation,

Respondents

On Petition for Writ of Certiorari
To The Supreme Court of the State of Tennessee

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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SUPPLEMENTAL APPENDIX

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IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

BOBBY RIGGS and M-HELICOPTERS OF TENNESSEE, INC.,	) C/A NO. 03A01-90506-CV-00193
Plaintiffs-Appellants,	)
v.	) SEVIER LAW
CHARLES W. BURSON, Tennessee Attorney General and Reporter, CARL JOHNSON, Commissioner of the Tennessee Department of Transportation,	) HON. WILLIAM R. HOLT, Jr., JUDGE
Defendants-Appellees.	) VACATED AND REMANDED

OPINION

Franks, J.

This action challenged the constitutionality of Chapter 727 of the 1992 Tennessee Public Acts, now codified at Tennessee Code Annotated §§42-8-101 to -105 (1993). The Trial Court, responding to a motion to dismiss filed by the defendants, dismissed the action pursuant to Tennessee Rules of Civil Procedure, Rule 12.

Plaintiffs have appealed.

The aforementioned chapter provides that land located in a tourist county within nine miles of a national park boundary cannot be used as a heliport.[1] It also gives a private right of action for nuisance to citizens within the restricted area.

Plaintiff Riggs is the owner/operator of a heliport located within the area restricted by the statute. He has challenged Chapter 727 on the grounds that it is invalid due to federal preemption of this field, violates due process/equal protection provisions of the federal and state constitutions, and is a special law violating Art. XI, §8 of the Tennessee Constitution. He also argues Tennessee Code Annotated §13-7-208 allows him to continue his non-conforming operation.

In dismissing the action, the Trial Court said the Chapter is a land use statute and is therefore not preempted by federal law, and that it does not violate due process or equal protection because it is a rationally based and facially constitutional exercise of land use authority by the General Assembly, and T.C.A. §13-7-208(b) does not apply to Chapter 727 because it applies to municipal zoning only. Even if §13-7-208 did apply to a state law, the Trial Court found that Chapter 727 would act to repeal or amend by implication any conflicting provisions and would not allow plaintiff's use to continue.

In considering a motion to dismiss, all of the facts alleged in the complaint are taken as true. *Cornpropst v.*

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[1] Note that §42-1-301 to 303 (1993) also deals with heliports. It provides that "No person shall engage in commercial heliport touring in any tourist resort county . . . except at a primary public airport."

Sloan, 528 S.W.2d 188 (Tenn. 1975). The Court then determines whether those facts state a cause of action that should be decided by a trier of fact. *Gray v. McDonald's Corp.*, 874 S.W.2d 44 (Tenn. App. 1993).

Plaintiff argues the Trial Court improperly construed the pleadings in favor of the defendants when it determined that the statute had a rational basis. It is argued the Court should have accepted the plaintiff's contention that the law did not have a rational basis.

If the elements of an action are present, the claim should be remanded for a trial on the merits. If the elements are not present, the granting of the motion to dismiss must be sustained.

The supremacy clause gives Congress the power to preempt state law. U.S. Constitution Article VI. Preemption is found in the following circumstances:

> Preemption occurs when Congress, in enacting a federal statute, expresses a clear intent to preempt state law, when there is outright or actual conflict between state and federal law, where compliance with both federal and state law is in effect physically impossible, where there is implicit in federal law a barrier to state regulation, where Congress has legislated comprehensively, thus occupying an entire field of regulation and leaving no room for the States to supplement federal law, or where the state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress.

Watson v. Cleveland Chair Co., 789 S.W.2d 538 (Tenn. 1989) (cites omitted).

In this case, plaintiffs contend Chapter 727 is directed at noise, an area which the federal government has impliedly preempted through the Federal Aviation Act and the Noise Control Act. *City of Burbank v. Lockheed Air Terminal Inc.*, 411 U.S. 624, 93 S.Ct. 1845, 36 L.Ed.2d 547 (1973). Plaintiff further argues a distinction can be drawn between preempted statutes directed at noise and land use statutes directed at the siting of airports.

If it should be determined that Chapter 727 is directed at noise, the statute would be preempted under *City of Burbank*. Since the elements of a preemption claim were alleged, the granting of the motion to dismiss was error.

Due process and equal protection requires that all persons and entities shall be treated the same under like circumstances and conditions, both as to privileges conferred and liabilities incurred. *Genesco, Inc. v. Woods*, 578 S.W.2d 639 (Tenn. 1979). Unless a classification impermissibly interferes with the exercise of a fundamental right or operates to the particular disadvantage of a suspect class the classification is subject to the rational basis test. *Harrison v. Schrader*, 569 S.W.2d 822 (Tenn. 1978).

Here, the classification has been created among heliports located near the Smoky Mountains. A rational basis test should be used because no fundamental right or suspect class is implicated. The rational basis test upholds the classification made by a statute if there is any possible reason or justification for its passage. *Kelley v. 3-M Co.*, 639 S.W.2d 437 (Tenn. 1982). The appropriate inquiry is whether the classification has a reasonable relationship to a legitimate state interest. *State v. Tester*, 879 S.W.2d 823 (Tenn. 1994). The burden of showing that a classification is unreasonable and arbitrary is placed upon the individual challenging the statute. *Harrison*.

The plaintiff argues there is no rational basis for this

distinction among heliports. He also argues that noise control can not provide a basis for this distinction, because it is precluded by the federal preemption field. If he can demonstrate this is true, he may prevail, and granting the motion to dismiss was in error.

Tennessee Constitution, Article XI, §8 provides that:

> General laws only to be passed. - The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunitie[s], or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of each law . . . .

In order to trigger analysis under this provision, a statute must "contravene some general law which has mandatory statewide application." *Civil Service Merit Board v. Burson*, 816 S.W.2d 725 (Tenn. 1991); *Knox County ex rel. Kessel v. Lenoir City*, 837 S.W.2d 382 (Tenn. 1992).

Plaintiff's complaint does not specifically state a general law which has been suspended by Chapter 727. He simply argues that the general law would apply to all heliport operators in Sevier, Blount, and Cocke Counties, but for the imposition of the nine mile zone.

A general law which would apply in the absence of Chapter 727 is T.C.A. §42-2-211, which governs the licensing of airports. Chapter 727 contravenes its provisions when it provides that "the department of transportation shall

not issue or renew licenses pursuant to chapter 2 of this title for any heliport located on land subject to the prohibition . . . except that licenses may be renewed for helicopters [during the amortization period]. T.C.A. §42-8-201(b).[2]

If Chapter 727 suspends the general licensing law, such suspension would not violate Art. XI, §8, unless it creates classifications which are capricious, unreasonable, or arbitrary. *Burson*. Where the reasonableness of the classification is fairly debatable the courts will uphold the classification. *Stalcup v. City of Gatlinburg*, 577 S.W.2d 439 (Tenn. 1978). If any possible reason can be conceived to justify the classification, it will be upheld and deemed reasonable. *Id.*

Here, a distinction has been drawn between the licensing of a heliport operator within the nine mile range and outside the range. Plaintiff's complaint alleges that no reasonable basis exists for this distinction. This issue is

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[2] Approval of airport licenses takes place if the Department of Transportation is satisfied that "(A) The site is adequate for the proposed airport; (B) Such proposed airport, if constructed or established, will conform to minimum standards of safety; and (C) Safe air traffic patterns could be worked out for such proposed airport and for all existing airports and approved airport sites in its vicinity." Renewal is allowed unless the department "reasonably determines that (1) There has been an abandonment of the airport as such; (2) There has been a failure to comply with the conditions of the license of renewal thereof; or (3) Because of a change of physical or legal conditions or circumstances the airport has become either unsafe or unusable for the aeronautical purposes for which the license or renewal was issued." Tenn. Code Ann. §42-2-211.

likewise inappropriate for summary judgment.

Finally, T.C.A. §13-7-208 protects some nonconforming uses from changes in zoning provisions. It reads:

> In the event that a zoning change occurs in any land area where such land area was not previously covered by any zoning restrictions of any governmental agency of this state or its political subdivisions, and such zoning restrictions differ from zoning restrictions imposed after the zoning change, then any industrial, commercial or business establishment in operation, permitted to operate under zoning regulations or exceptions thereto prior to the zoning change shall be allowed to continue in operation and be permitted; provided, that no change in the use of the land is undertaken by such industry or business.

T.C.A. §13-7-208(b) (1995).

Plaintiff argues that he is entitled to continue his operation under this provision. However, there are at least two reasons why the provisions of T.C.A. §13-7-208(b) do not apply in this case. First, §13-7-208 applies only to municipal zoning ordinances. *Fields v. White*, 1989 WL 5456 (Tenn. App. 1989); *also see State ex rel. Browning-Ferris Industries of Tenn. v. Bd. of Commissioners of Knox County*, 806 S.W.2d 181, 189 (Tenn. App. 1990). Although plaintiff cites *Sanders v. Angie Properties, Inc.*, 834 S.W.2d 332 (Tenn. App. 1992) for the proposition that the statute applies to county ordinances and therefore could also apply to state ordinances, *Sanders* only made a reference to "*See*

Tenn. Code Ann. §13-7-208(b)" in its discussion of non-conforming uses. The *Sanders* Court did not interpret or apply the statute. *Id.*

The other reason that §13-7-208 does not apply is established by the language of Chapter 727:

> Violations - Heliport deemed nuisance - Abatement, removal, conformity - Notwithstanding the provisions of §13-7-208 or any other law to the contrary, a heliport operating as of April 23, 1992, that is in violation of §42-8-102(a) is declared a public nuisance and shall be abated, removed or changed to conform with this chapter by July 1, 1994. Such heliports may continue to operate until that date provided: (1) The heliport is not extended or expanded; and (2) If the use of the land or any portion thereof as a heliport is discontinued for a period of six (6) months or changed, any future use of the land is in conformity with this chapter.

Tenn. Code Ann. §42-8-103 (emphasis supplied).

This provision demonstrates that the General Assembly considered §13-7-208 and specifically rejected its application to these circumstances.

A claim under T.C.A. §13-7-208 requires a municipal zoning ordinance. No such ordinance is alleged in plaintiff's complaint. The motion was properly granted as to this ground.

The allegations of the complaint set forth the elements for claims of preemption, due process and equal protection, and an unconstitutional suspension of general law. Our decision is not to be construed to say the statutes are free or

not free of constitutional defects. We are remanding the case for the parties to be afforded the opportunity to introduce any evidence which is material and pertinent in considering the validity of the statute. *Lawrence v. Stanford*, 655 S.W.2d 927 (Tenn. 1983).

The costs of the appeal are assessed to the defendants, and the cause remanded for further proceedings consistent with this opinion.

Herschel P. Franks, J.

CONCUR:
Don T. McMurray, J.
Charles D. Susano, Jr., J.

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

NOT FOR PUBLICATION

BOBBY RIGGS and M-HELICOPTERS OF TENNESSEE, INC.,	)	Filed:
	)	April 7, 1997
Plaintiffs-Appellees,	)	
	)	Sevier County
Vs.	)	
	)	No. 03-S-01
CHARLES W. BURSON, Tennessee Attorney General and Reporter, CARL JOHNSON, Commissioner of the Tennessee Department of Transportation,	)	-9603 -CV
	)	-00032
	)	
	)	
	)	
Defendants-Appellants.	)	

ORDER DENYING PETITION TO REHEAR

The plaintiffs have filed a petition to rehear this case pursuant to Tenn. R. App. P. 39, contending that our opinion conflicts with existing authority, overlooks or misapprehends a proposition of law, and relies on material facts which are in dispute.

After due consideration, we conclude that the petition to rehear should be denied.

PER CURIAM